

ENTERED

June 13, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

ERIK ALEMAN,

Plaintiff,

VS.

COREY FURR, *et al*,

Defendants.

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CIVIL NO. 2:16-CV-00470

ORDER

Before the Court is the May 3, 2017, Memorandum and Recommendation (“M&R”) of the Magistrate Judge to whom this case was referred, Dkt. No. 13; Plaintiff’s May 15, 2017, Objection to the M&R, Dkt. No. 14; the May 22, 2017, Order of the Magistrate Judge, Dkt. No. 16; Plaintiff’s June 1, 2017, Objection to the Order, Dkt. No. 17; and the February 7, 2018, M&R of the Magistrate Judge, Dkt. No. 32. The Court **GRANTS** the Defendants’ Motion for Summary Judgment, Dkt. No. 30, and **DISMISSES WITH PREJUDICE** this action.

I. May 3, 2017, M&R

The May 3, 2017, M&R recommends that the Court retain Plaintiff’s excessive force claims against Defendants Usvaldo Hernandez (“Hernandez”) and Neftali Chavez (“Chavez”)¹ and dismiss with prejudice Plaintiff’s other claims. Dkt. No. 13 at 9. On May 15, 2017, Plaintiff filed an objection to the M&R. Dkt. No. 14. The Court reviews objected-to portions of the Magistrate Judge’s proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). Plaintiff’s objection is frivolous, conclusory, general, or contains no arguments that the M&R has not already considered. *See* Dkt. Nos. 13, 14; *Battle v. United States Parole Comm’n*,

¹ Although the May 3, 2017, M&R and Plaintiff’s complaint do not provide the first names of these Defendants, *see* Dkt. Nos. 1 & 13, Defendants’ November 17, 2017, Motion for Summary Judgment lists Defendants’ full names as “Usvaldo Hernandez” and “Neftali Chavez.” Dkt. No. 30 at 1. The Court adopts these names given that Defendants’ Motion for Summary Judgment is unopposed.

834 F.2d 419 (5th Cir. 1987) (determining that a district court need not consider frivolous, conclusive, or general objections).

After independently reviewing the record and considering the applicable law, the Court **ADOPTS** the M&R in its entirety, Dkt. No. 13, and **OVERRULES** Plaintiff's objection, Dkt. No. 14. The Court **RETAINS** Plaintiff's excessive force claims against Hernandez and Chavez and **DISMISSES WITH PREJUDICE** Plaintiff's other claims. Dkt. No. 1.

II. May 22, 2017, Order

The Magistrate Judge's May 22, 2017, Order, Dkt. No. 16, denied Plaintiff's motion for appointment of counsel, Dkt. No. 15. On June 1, 2017, Plaintiff filed an objection to the Order. Dkt. No. 17. The Court will "modify or set aside any part" of a Magistrate Judge's non-dispositive pre-trial ruling that is "clearly erroneous or is contrary to law." FED. R. CIV. P. 72(a). Under this highly deferential standard, the Magistrate Judge's ruling "should not be rejected merely because the court would have decided the matter differently." *Arvie v. Tanner*, No. 12-1648, 2012 WL 3597127, at *1 (E.D. La. Aug. 21, 2012) (citations and internal quotation marks omitted). The Magistrate Judge's decision "must be affirmed unless 'on the entire evidence [the Court] is left with a definite and firm conviction that a mistake has been committed.'" *Arvie*, 2012 WL 3597127, at *1 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

After independently reviewing the record and considering the applicable law, the Court **OVERRULES** Plaintiff's objection. Dkt. No. 17. For the reasons stated in the May 22, 2017, Order, the factors before the Court did not weigh in favor of appointment of counsel. Dkt. No. 16.

III. February 7, 2018, M&R

The February 7, 2018, M&R, Dkt. No. 32, recommends that the Court grant Defendants Hernandez and Chavez's November 17, 2017, motion for summary judgment, Dkt. No. 30. No party filed an objection to the M&R. *See* 28 U.S.C. § 636(b)(1) (setting a 14-day deadline to file objections; FED. R. CIV. P. 72(b)(2) (same); *see also* Dkt. No. 32 at 16 (advising parties of the 14-day deadline).

After independently reviewing the record and considering the applicable law, the Court **ADOPTS** the M&R in its entirety. Dkt. No. 32. The Court **DISMISSES WITH PREJUDICE** Plaintiff's claims against Defendants Hernandez and Chavez.

IV. Conclusion

In conclusion, the Court:

- **GRANTS** Defendants' November 17, 2017, motion for summary judgment, Dkt. No. 30, and
- **DISMISSES WITH PREJUDICE** this action.

The Court will direct entry of Final Judgment separately.

SIGNED this 13th day of June, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle
Senior United States District Judge